

AMENDED IN SENATE JUNE 24, 2002

AMENDED IN SENATE JUNE 26, 2001

AMENDED IN ASSEMBLY MARCH 29, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 947**

**Introduced by Assembly Member Jackson**

February 23, 2001

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An act to amend Section 35294.2 of the Education Code, to amend Section 12999.5 of, and to add Section 11503.5 to, the Food and Agricultural Code, relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

AB 947, as amended, Jackson. Pesticides: schoolsites.

(1) Existing law authorizes the levy of civil penalties of not more than \$1,000 for each violation of any provision of a specified body of law relating to pesticides.

This bill would increase this penalty to not more than \$5,000 for each violation determined to be a serious violation. This bill would also authorize a county agricultural commissioner to charge a fee for monitoring subsequent pesticide applications made within  $\frac{1}{4}$  mile of a school by a person who has received a civil penalty for a specified violation of law relating to pesticides.

(2) Under existing law, the agricultural commissioner of any county may adopt regulations applicable in his or her county that are supplemental to those of the Secretary of Food and Agriculture that govern the conduct of pest control operations and records and reports of those operations.

This bill would authorize the commissioner of any county to condition the agricultural use of any pesticide within  $\frac{1}{4}$  mile of a school, as specified, *and would allow the Director of Pesticide Regulation to disapprove the conditions within 15 days of their submission.*

(3) Existing law provides that each school district and county office of education is responsible for the overall development of comprehensive school safety plans for its schools.

This bill would require that the school safety plan include procedures for responding to the release of a pesticide or other toxic substance from properties within  $\frac{1}{4}$  mile of a school. By imposing additional duties on local entities, the bill would establish a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1    ~~SECTION 1. Section 35294.2 of the Education Code is~~  
 2    ~~amended to read:~~  
 3    ~~35294.2. (a) The comprehensive school safety plan shall~~  
 4    ~~include, but not necessarily be limited to, the following:~~  
 5    ~~(1) Assessing the current status of school crime committed on~~  
 6    ~~school campuses and at school-related functions.~~  
 7    ~~(2) Identifying appropriate strategies and programs that will~~  
 8    ~~provide or maintain a high level of school safety and address the~~  
 9    ~~school's procedures for complying with existing laws related to~~  
 10    ~~school safety, which shall include the development of all of the~~  
 11    ~~following:~~

1 ~~(A) Child abuse reporting procedures consistent with Article~~  
2 ~~2.5 (commencing with Section 11164) of Title 1 of Part 4 of the~~  
3 ~~Penal Code.~~

4 ~~(B) Disaster procedures, routine and emergency including~~  
5 ~~provisions for responding to the release of a pesticide or other toxic~~  
6 ~~substance from properties located within one-quarter mile of a~~  
7 ~~school.~~

8 ~~(C) Policies pursuant to subdivision (d) of Section 48915 for~~  
9 ~~pupils who committed an act listed in subdivision (e) of Section~~  
10 ~~48915 and other school-designated serious acts which would lead~~  
11 ~~to suspension, expulsion, or mandatory expulsion~~  
12 ~~recommendations pursuant to Article 1 (commencing with~~  
13 ~~Section 48900) of Chapter 6 of Part 27.~~

14 ~~(D) Procedures to notify teachers of dangerous pupils pursuant~~  
15 ~~to Section 49079.~~

16 ~~(E) A sexual harassment policy, pursuant to subdivision (b) of~~  
17 ~~Section 231.5.~~

18 ~~(F) The provisions of any schoolwide dress code, pursuant to~~  
19 ~~Section 35183, that prohibits pupils from wearing “gang-related~~  
20 ~~apparel,” if the school has adopted such a dress code. For those~~  
21 ~~purposes, the comprehensive school safety plan shall define~~  
22 ~~“gang-related apparel.” The definition shall be limited to apparel~~  
23 ~~that, if worn or displayed on a school campus, reasonably could be~~  
24 ~~determined to threaten the health and safety of the school~~  
25 ~~environment. Any schoolwide dress code established pursuant to~~  
26 ~~this section and Section 35183 shall be enforced on the school~~  
27 ~~campus and at any school-sponsored activity by the principal of~~  
28 ~~the school or the person designated by the principal. For the~~  
29 ~~purposes of this paragraph, “gang-related apparel” shall not be~~  
30 ~~considered a protected form of speech pursuant to Section 48950.~~

31 ~~(G) Procedures for safe ingress and egress of pupils, parents,~~  
32 ~~and school employees to and from school.~~

33 ~~(H) A safe and orderly environment conducive to learning at~~  
34 ~~the school.~~

35 ~~(I) The rules and procedures on school discipline adopted~~  
36 ~~pursuant to Sections 35291 and 35291.5.~~

37 ~~(b) It is the intent of the Legislature that schools develop~~  
38 ~~comprehensive school safety plans using existing resources,~~  
39 ~~including the materials and services of the School Safety~~  
40 ~~Partnership, pursuant to Chapter 2.5 (commencing with Section~~

32260) of Part 19. It is also the intent of the Legislature that schools use the handbook developed and distributed by the School/Law Enforcement Partnership Program entitled “Safe Schools: A Planning Guide for Action” in conjunction with developing their plan for school safety.

~~(e) Grants to assist schools in implementing their comprehensive school safety plan shall be made available through the School Safety Partnership as authorized by Section 32262.~~

~~(d) Each schoolsite council or school safety planning committee in developing and updating a comprehensive school safety plan shall, where practical, consult, cooperate, and coordinate with other schoolsite councils or school safety planning committees.~~

~~(e) The comprehensive school safety plan shall be evaluated and amended, as needed, by the school safety planning committee no less than once a year to ensure that the comprehensive school safety plan is properly implemented. An updated file of all safety-related plans and materials shall be readily available for inspection by the public.~~

~~(f) The comprehensive school safety plan, as written and updated by the schoolsite council or school safety planning committee, shall be submitted for approval under subdivision (a) of Section 35294.8.~~

*SECTION 1. Section 35294.2 of the Education Code is amended to read:*

35294.2. (a) The comprehensive school safety plan shall include, but not necessarily be limited to, the following:

(1) Assessing the current status of school crime committed on school campuses and at school-related functions.

(2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety and address the school’s procedures for complying with existing laws related to school safety, which shall include the development of all of the following:

(A) Child abuse reporting procedures consistent with Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code.

(B) Disaster procedures, routine and emergency, *including provisions for responding to the release of a pesticide or other toxic*

1 *substance from properties located within one-quarter mile of a*  
2 *school.*

3 (C) Policies pursuant to subdivision (d) of Section 48915 for  
4 pupils who committed an act listed in subdivision (c) of Section  
5 48915 and other school-designated serious acts which would lead  
6 to suspension, expulsion, or mandatory expulsion  
7 recommendations pursuant to Article 1 (commencing with  
8 Section 48900) of Chapter 6 of Part 27.

9 (D) Procedures to notify teachers of dangerous pupils pursuant  
10 to Section 49079.

11 (E) A discrimination and harassment policy consistent with the  
12 prohibition against discrimination contained in Chapter 2  
13 (commencing with Section 200) of Part 1.

14 (F) The provisions of any schoolwide dress code, pursuant to  
15 Section 35183, that prohibits pupils from wearing “gang-related  
16 apparel,” if the school has adopted such a dress code. For those  
17 purposes, the comprehensive school safety plan shall define  
18 “gang-related apparel.” The definition shall be limited to apparel  
19 that, if worn or displayed on a school campus, reasonably could be  
20 determined to threaten the health and safety of the school  
21 environment. Any schoolwide dress code established pursuant to  
22 this section and Section 35183 shall be enforced on the school  
23 campus and at any school-sponsored activity by the principal of  
24 the school or the person designated by the principal. For the  
25 purposes of this paragraph, “gang-related apparel” shall not be  
26 considered a protected form of speech pursuant to Section 48950.

27 (G) Procedures for safe ingress and egress of pupils, parents,  
28 and school employees to and from school.

29 (H) A safe and orderly environment conducive to learning at  
30 the school.

31 (I) The rules and procedures on school discipline adopted  
32 pursuant to Sections 35291 and 35291.5.

33 (J) Hate crime reporting procedures pursuant to Chapter 1.2  
34 (commencing with Section 628) of Title 15 of Part 1 of the Penal  
35 Code.

36 (b) It is the intent of the Legislature that schools develop  
37 comprehensive school safety plans using existing resources,  
38 including the materials and services of the School Safety  
39 Partnership, pursuant to Chapter 2.5 (commencing with Section  
40 32260) of Part 19. It is also the intent of the Legislature that schools

1 use the handbook developed and distributed by the School/Law  
2 Enforcement Partnership Program entitled “Safe Schools: A  
3 Planning Guide for Action” in conjunction with developing their  
4 plan for school safety.

5 (c) Grants to assist schools in implementing their  
6 comprehensive school safety plan shall be made available through  
7 the School Safety Partnership as authorized by Section 32262.

8 (d) Each schoolsite council or school safety planning  
9 committee in developing and updating a comprehensive school  
10 safety plan shall, where practical, consult, cooperate, and  
11 coordinate with other schoolsite councils or school safety planning  
12 committees.

13 (e) The comprehensive school safety plan shall be evaluated  
14 and amended, as needed, by the school safety planning committee  
15 no less than once a year to ensure that the comprehensive school  
16 safety plan is properly implemented. An updated file of all  
17 safety-related plans and materials shall be readily available for  
18 inspection by the public.

19 (f) The comprehensive school safety plan, as written and  
20 updated by the schoolsite council or school safety planning  
21 committee, shall be submitted for approval under subdivision (a)  
22 of Section 35294.8.

23 SEC. 2. Section 11503.5 is added to the Food and Agricultural  
24 Code, to read:

25 11503.5. ~~The county agricultural commissioner may~~  
26 ~~condition the agricultural use of any pesticide for agricultural~~  
27 ~~production within one-quarter mile of a school with respect to~~  
28 ~~timing, notification, and method of application. The county~~  
29 *agricultural commissioner may, consistent with the processes*  
30 *required by this chapter, condition the agricultural use of any*  
31 *pesticide for agricultural production within one-quarter mile of a*  
32 *school with respect to the timing, notification, and method of*  
33 *application. Notwithstanding any other provision of this chapter,*  
34 *a notice of intention to adopt conditions shall be transmitted to the*  
35 *director immediately upon its approval by the commissioner. Any*  
36 *conditions adopted pursuant to this section shall become operative*  
37 *unless specifically disapproved in writing by the director within 15*  
38 *working days of their submission by the commissioner. The*  
39 *director, in his or her review of the commissioner’s conditions,*  
40 *shall be limited to a determination of whether or not the conditions*

1 *imposed are reasonably related to the goal of protecting the health*  
2 *and safety of schoolchildren, school employees, and school*  
3 *visitors.*

4 SEC. 3. Section 12999.5 of the Food and Agricultural Code  
5 is amended to read:

6 12999.5. (a) In lieu of civil prosecution by the director, the  
7 commissioner may levy a civil penalty against a person violating  
8 Division 6 (commencing with Section 11401), Article 10  
9 (commencing with Section 12971) or Article 10.5 (commencing  
10 with Section 12980) of this chapter, Section 12995, Article 1  
11 (commencing with Section 14001) of Chapter 3, Chapter 7.5  
12 (commencing with Section 15300), or a regulation adopted  
13 pursuant to any of these provisions, of not more than one thousand  
14 dollars (\$1,000) for each violation. Any violation determined by  
15 the commissioner to be a serious violation as defined in Section  
16 6130 of the Code of Regulations is subject to a fine of not more  
17 than five thousand dollars (\$5,000) for each violation. It is  
18 unlawful and grounds for denial of a permit under Section 14008  
19 for any person to refuse or neglect to pay a civil penalty levied  
20 pursuant to this section once the order is final.

21 (b) If a person has received a civil penalty for pesticide drift in  
22 a school area subject to Section 11503.5 that results in a serious  
23 violation as defined in subdivision (a), the commissioner shall  
24 charge a fee, not to exceed fifty dollars (\$50), for processing and  
25 monitoring each subsequent pesticide application that may pose a  
26 risk of pesticide drift made in a school area subject to Section  
27 11503.5. The Agricultural Commissioner shall continue to impose  
28 the fee for each subsequent application that may pose a risk of drift,  
29 until the person has completed 24 months without another serious  
30 violation as defined in subdivision (a).

31 (c) Before a civil penalty is levied, the person charged with the  
32 violation shall be given a written notice of the proposed action  
33 including the nature of the violation and the amount of the  
34 proposed penalty, and shall have the right to request a hearing  
35 within 20 days after receiving notice of the proposed action. A  
36 notice of the proposed action that is sent by certified mail to the last  
37 known address of the person charged shall be considered received  
38 even if delivery is refused or the notice is not accepted at that  
39 address. If a hearing is requested, notice of the time and place of  
40 the hearing shall be given at least 10 days before the date set for



1 the hearing. At the hearing, the person shall be given an  
2 opportunity to review the commissioner's evidence and to present  
3 evidence on his or her own behalf. If a hearing is not timely  
4 requested, the commissioner may take the action proposed without  
5 a hearing.

6 (d) If the person upon whom the commissioner levied a civil  
7 penalty requested and appeared at a hearing, the person may appeal  
8 the commissioner's decision to the director within 30 days of the  
9 date of receiving a copy of the commissioner's decision. The  
10 following procedures apply to the appeal:

11 (1) The appeal shall be in writing and signed by the appellant  
12 or his or her authorized agent, state the grounds for the appeal, and  
13 include a copy of the commissioner's decision. The appellant shall  
14 file a copy of the appeal with the commissioner at the same time  
15 it is filed with the director.

16 (2) The appellant and the commissioner may, at the time of  
17 filing the appeal or within 10 days thereafter or at a later time  
18 prescribed by the director, present the record of the hearing  
19 including written evidence that was submitted at the hearing and  
20 a written argument to the director stating grounds for affirming,  
21 modifying, or reversing the commissioner's decision.

22 (3) The director may grant oral arguments upon application  
23 made at the time written arguments are filed.

24 (4) If an application to present an oral argument is granted,  
25 written notice of the time and place for the oral argument shall be  
26 given at least 10 days before the date set therefor. The times may  
27 be altered by mutual agreement of the appellant, the  
28 commissioner, and the director.

29 (5) The director shall decide the appeal on the record of the  
30 hearing, including the written evidence and the written argument  
31 described in paragraph (2), that he or she has received. If the  
32 director finds substantial evidence in the record to support the  
33 commissioner's decision, the director shall affirm the decision.

34 (6) The director shall render a written decision within 45 days  
35 of the date of appeal or within 15 days of the date of oral arguments  
36 or as soon thereafter as practical.

37 (7) On an appeal pursuant to this section, the director may  
38 affirm the commissioner's decision, modify the commissioner's  
39 decision by reducing or increasing the amount of the penalty levied  
40 so that it is within the director's guidelines for imposing civil



1 penalties, or reverse the commissioner's decision. Any civil  
2 penalty increased by the director shall not be higher than that  
3 proposed in the commissioner's notice of proposed action given  
4 pursuant to subdivision (b). A copy of the director's decision shall  
5 be delivered or mailed to the appellant and the commissioner.

6 (8) Any person who does not request a hearing pursuant to  
7 subdivision (b) may not file an appeal pursuant to this subdivision.

8 (9) Review of a decision of the director may be sought by the  
9 appellant within 30 days of the date of the decision pursuant to  
10 Section 1094.5 of the Code of Civil Procedure.

11 (e) The commissioner may levy a civil penalty pursuant to  
12 subdivisions (a) to (c), inclusive, against a person violating  
13 paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the  
14 Labor Code, which pertains to registration with the commissioner,  
15 carrying proof of that registration, and filing changes of address  
16 with the commissioner.

17 (f) After the exhaustion of the appeal and review procedures  
18 provided in this section, the commissioner or his or her  
19 representative, may file a certified copy of a final decision of the  
20 commissioner that directs the payment of a civil penalty and, if  
21 applicable, a copy of any decision of the director or his or her  
22 authorized representative rendered on an appeal from the  
23 commissioner's decision and a copy of any order that denies a  
24 petition for a writ of administrative mandamus, with the clerk of  
25 the superior court of any county. Judgment shall be entered  
26 immediately by the clerk in conformity with the decision or order.  
27 No fees shall be charged by the clerk of the superior court for the  
28 performance of any official service required in connection with the  
29 entry of judgment pursuant to this section.

30 SEC. 4. Notwithstanding Section 17610 of the Government  
31 Code, if the Commission on State Mandates determines that this  
32 act contains costs mandated by the state, reimbursement to local  
33 agencies and school districts for those costs shall be made pursuant  
34 to Part 7 (commencing with Section 17500) of Division 4 of Title  
35 2 of the Government Code. If the statewide cost of the claim for  
36 reimbursement does not exceed one million dollars (\$1,000,000),  
37 reimbursement shall be made from the State Mandates Claims  
38 Fund.

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